

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

|                            |   |                  |
|----------------------------|---|------------------|
| MARILYN ELAINE DEETER,     | : | CIVIL ACTION     |
| Plaintiff                  | : |                  |
|                            | : |                  |
| v.                         | : |                  |
|                            | : |                  |
| GREENE, TWEED AND COMPANY, | : |                  |
| INC.,                      | : |                  |
| Defendant/Third-Party      | : |                  |
| Plaintiff                  | : |                  |
|                            | : |                  |
| v.                         | : |                  |
|                            | : |                  |
| HARTFORD LIFE AND ACCIDENT | : |                  |
| INSURANCE COMPANY,         | : |                  |
| Third-Party Defendant      | : | NO. 98-1222      |
|                            |   |                  |
| Newcomer, J.               |   | September , 1998 |

**M E M O R A N D U M**

Presently before the Court are third-party defendant Hartford Life and Accident Insurance Company's Motion for Summary Judgment and third-party plaintiff Greene, Tweed and Company, Inc.'s response thereto. For the reasons that follow, said Motion will be granted in part and denied in part.

**A. Background**

Plaintiff in this case is Marilyn Deeter, the administrator and sole beneficiary of her late husband Robert Deeter's estate. Mr. Deeter was an employee of defendant Greene, Tweed and Company ("Greene Tweed") from 1974 up until the time of his death on January 25, 1997. Although Mr. Deeter left work in October of 1996 when he became ill and never returned to work prior to his death, at all relevant times he was a fully-salaried employee of Greene Tweed.

Through November 30, 1996, Mr. Deeter was insured through his employer, Greene Tweed, for life insurance benefits of \$90,000.00 pursuant to a group policy underwritten by Canada Life Assurance Company. In the fall of 1996, however, Greene Tweed decided to switch insurance carriers to third-party defendant Hartford Life and Accident Insurance Company ("Hartford"), effective December 1, 1996. Hartford thus became Greene Tweed's insurance carrier effective December 1, 1996.

After her husband's death on January 25, 1997, plaintiff filed for life insurance benefits with Greene Tweed. Greene Tweed in turn applied to Canada Life for the benefits, and when that application was rejected, applied to Hartford. Hartford ultimately rejected plaintiff's application on the grounds that Mr. Deeter was never covered under Hartford's policy because he was never an "Active Full-time Employee" on or after December 1, 1996 when Hartford's coverage became effective.

Plaintiff then instituted the present action against Greene Tweed under the Employee Retirement Income Security Act ("ERISA"), claiming, inter alia, that Greene Tweed, an ERISA plan administrator, breached its fiduciary duty to Mr. Deeter, a plan participant, by failing to inform him of the detrimental consequences of changing carriers. Greene Tweed in turn filed a third-party complaint against Hartford, alleging breach of contract, promissory estoppel, indemnification and contribution, and bad faith under 42 Pa. Cons. Stat. § 8371. Hartford now moves for summary judgment, arguing that Greene Tweed's claims

are preempted by ERISA and/or that Hartford's policy unambiguously excludes Mr. Deeter from coverage because he was never an "Active Full-time Employee."

**B. Legal Standard**

A reviewing court may enter summary judgment where there are no genuine issues as to any material fact and one party is entitled to judgment as a matter of law. White v. Westinghouse Elec. Co., 862 F.2d 56, 59 (3d Cir. 1988). The evidence presented must be viewed in the light most favorable to the non-moving party. Id. "The inquiry is whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one sided that one party must, as a matter of law, prevail over the other." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). In deciding the motion for summary judgment, it is not the function of the Court to decide disputed questions of fact, but only to determine whether genuine issues of fact exist. Id. at 248-49.

The moving party has the initial burden of identifying evidence which it believes shows an absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986); Childers v. Joseph, 842 F.2d 689, 694 (3d Cir. 1988). The moving party's burden may be discharged by demonstrating that there is an absence of evidence to support the nonmoving party's case. Celotex, 477 U.S. at 325. Once the moving party satisfies its burden, the burden shifts to the nonmoving party, who must go

beyond its pleadings and designate specific facts, by use of affidavits, depositions, admissions, or answers to interrogatories, showing that there is a genuine issue for trial. Id. at 324. Moreover, when the nonmoving party bears the burden of proof, it must "make a showing sufficient to establish the existence of [every] element essential to that party's case." Equimark Commercial Fin. Co. v. C.I.T. Fin. Servs. Corp., 812 F.2d 141, 144 (3d Cir. 1987) (quoting Celotex, 477 U.S. at 322). Summary judgment must be granted "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." White, 862 F.2d at 59 (quoting Celotex, 477 U.S. at 322).

**C. Discussion**

1. Preemption

Hartford first argues that federal preemption doctrine precludes Greene Tweed's action against it. For purposes of this Motion, as Greene Tweed does not contest the allegation that it is a plan administrator under ERISA and that its group life insurance policy is an employee welfare benefit plan under ERISA, this Court accepts these facts as true. Under the statutory scheme, ERISA is to "supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C. § 1144(a). In other words, ERISA preempts any state law that "relates to" an employee benefit plan. A law "relates to" an employee benefit plan "if it has a connection with or

reference to such a plan." Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 96-97 (1983). In the instant case, Hartford argues that the common law causes of action asserted by Greene Tweed are preempted because they "relate to" the group insurance policy at issue in this case.

Initially, this Court notes that Greene Tweed's argument that Hartford could be considered a plan fiduciary is unsupported by any evidence in the record. Although Greene Tweed asks that this Court reserve judgment until discovery is concluded, the Court notes that all parties have had advance notice of the deadline for filing dispositive motions. Any dilatory behavior on the part of any of the parties should have been the subject of an appropriate discovery motion at the time of such behavior, and not an excuse for failing to complete relevant discovery in time for filing dispositive motions. Therefore, in view of Greene Tweed's inability to show that Hartford is a plan fiduciary for purposes of this Motion, the Court does not consider Greene Tweed's arguments on that ground.

As such, Greene Tweed's claims against Hartford constitute state law causes of action asserted by a plan fiduciary against a third-party provider of services. The parties cannot point to, and the Court is unaware of any precedent in this Circuit directly addressing the question of whether a plan fiduciary's action against an insurer is preempted by ERISA. This Court is persuaded, however, by the Ninth Circuit's reasoning in Geweke Ford v. St. Joseph's Omni Preferred

Care, Inc., 130 F.3d 1355 (9th Cir. 1997), that it is not. In that case, the Court of Appeals reaffirmed the "relationship test" in determining the limits of ERISA's preemption, stating that "[a] state law claim is preempted if it encroaches on the relationship regulated by ERISA." Id. at 1358. The Court specifically stated that "ERISA does not preempt regulation of those relationships where a plan operates just like any other commercial entity--for instance the relationship between . . . the plan and its insurers." Id.

In the instant case, this Court finds that the state law causes of action asserted by Greene Tweed--breach of contract, promissory estoppel, and indemnification--do not encroach upon a relationship regulated by ERISA. The third-party action is focused instead on the relationship between the plan administrator and its insurance carrier. In this context, the plan operates just like any other commercial entity, where the plan administrator bargains for and purchases coverage from the third-party provider of services. ERISA does not regulate such a relationship and therefore does not preempt any state law cause of action asserted in the context of such a relationship. Furthermore, to hold otherwise would be to shield all plan insurers from any liability arising from their performance on common commercial contracts with plan administrators. Such a result does not comport with the purposes of ERISA and cannot be countenanced by this Court. Accordingly, this Court finds that

Greene Tweed's claims for breach of contract, promissory estoppel, and indemnification are not preempted by ERISA.

## 2. Insurance Policy

Hartford also argues, in the alternative, that even if Greene Tweed's action is not preempted, summary judgment should be entered in Hartford's favor because Hartford's policy unambiguously excludes Mr. Deeter from coverage. Greene Tweed, on the other hand, does not contest the unambiguous language in Hartford's policy, nor the fact that Mr. Deeter was never an "Active Full-time Employee" as defined by Hartford's policy. Instead, Greene Tweed argues that Mr. Deeter is covered under the "reasonable expectations of the insured" doctrine and in view of the undisputed facts surrounding the transaction with Hartford.<sup>1</sup>

"Pennsylvania case law . . . dictates that the proper focus for determining issues of insurance coverage is the reasonable expectations of the insured." Reliance Ins. Co. v. Moessner, 121 F.3d 895, 903 (3d Cir. 1997). Although in most cases "the language of the insurance contract will provide the best indication of the content of the parties' reasonable expectations," courts are nevertheless required to examine "the totality of the insurance transaction involved to ascertain the reasonable expectations of the insured." Id. Thus "even the most clearly written exclusion will not bind the insured where the insurer or its agent has created in the insured a reasonable

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<sup>1</sup> Indeed, Greene Tweed argues that it, not Hartford, is entitled to summary judgment under this doctrine.

expectation of coverage." Id. Regardless of the ambiguity of an insurance policy, or lack thereof, courts should ensure that the insured's reasonable expectations are fulfilled. Id.

In the instant case, this Court finds that Greene Tweed has presented more than sufficient evidence to create a triable issue with respect to the reasonable expectations of the insured, whether that be Greene Tweed or Mr. Deeter.<sup>2</sup> Considering the totality of the insurance transaction at issue in this case, irrespective of the ambiguity or unambiguity of the language of the policy, this Court is amply satisfied that Greene Tweed has presented evidence showing that Mr. Deeter was included on a list of employees submitted to Hartford who were to receive life insurance benefits, that Greene Tweed made two premium payments for that list of employees prior to being notified of the exclusion based upon the term "Active Full-time Employee," that Hartford did not send a copy of the insurance policy to Greene Tweed until after Mr. Deeter's death, and that the insurance application filled out by Greene Tweed and accepted by Hartford did not include the term "Active Full-time Employee." In view of the above, this Court concludes that a genuine issue of material fact exists as to the insured's reasonable expectations as to the coverage of Hartford's policy. Accordingly Hartford's Motion

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<sup>2</sup> In fact, if Greene Tweed had submitted a timely cross-motion for summary judgment addressing this issue, it appears to this Court at this juncture and on the record before it that summary judgment might have been warranted in Greene Tweed's favor.

must be denied with respect to Greene Tweed's breach of contract, promissory estoppel, and indemnification claims.

### 3. Bad Faith Claim

However, this Court determines that Hartford's Motion with respect to Greene Tweed's bad faith claim is meritorious. In order to prove bad faith under 42 Pa. Cons. Stat. § 8371, Greene Tweed must show by clear and convincing evidence both of the following elements: (1) that the insurer lacked a reasonable basis for denying the benefits, and (2) that the insurer knew or recklessly disregarded its lack of reasonable basis. Klinger v. State Farm Mut. Auto. Ins. Co., 115 F.3d 230, 233 (3d Cir. 1997); Terletsky v. Prudential Property & Cas. Ins. Co., 649 680, 688 (Pa. Super. Ct. 1994). Greene Tweed, however, has not pointed to any evidence demonstrating either of the two elements for bad faith and indeed has not even responded to Hartford's arguments in favor of summary judgment on the bad faith claim. Accordingly, as Greene Tweed has failed to create a triable issue as to the bad faith claim, the Court will grant the instant Motion with respect to Court IV of Greene Tweed's Third-Party Complaint.

### **D. Conclusion**

In conclusion, third-party defendant's Motion for Summary Judgment will be granted in part and denied in part for the aforementioned reasons.

An appropriate Order follows.

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Clarence C. Newcomer, J.

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| HARTFORD LIFE AND ACCIDENT | : |              |
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| Third Party Defendant      | : | NO. 98-1222  |

**O R D E R**

AND NOW, this        day of September, 1998, upon consideration of third-party defendant Hartford Life and Accident Insurance Company's Motion for Summary Judgment, and third-party plaintiff Greene, Tweed & Company, Inc.'s response thereto, it is hereby ORDERED that said Motion is GRANTED in part and DENIED in part. The Motion is GRANTED as to Count IV of the third-party Complaint asserting a claim for bad faith insurance practices under 42 Pa. Cons. Stat. § 8371. It is further ORDERED that JUDGMENT is ENTERED in favor of third-party defendant and against third-party plaintiff on Count IV of third-party plaintiff's Complaint. The Motion is DENIED as to all remaining Counts of the third-party Complaint. All other claims remain for trial disposition.

AND IT IS SO ORDERED.

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Clarence C. Newcomer, J.